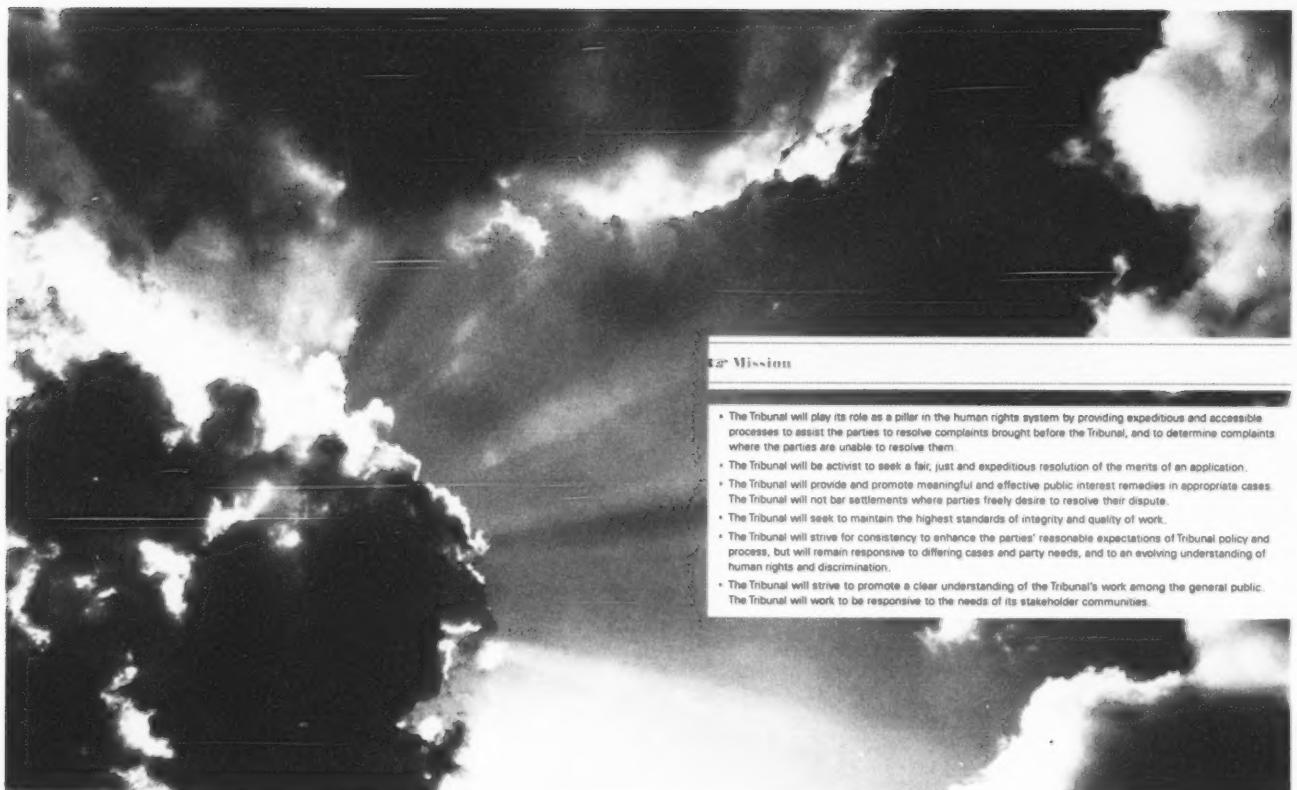




Human Rights Tribunal of Ontario : Annual Report 2009-10

RESOLVE:

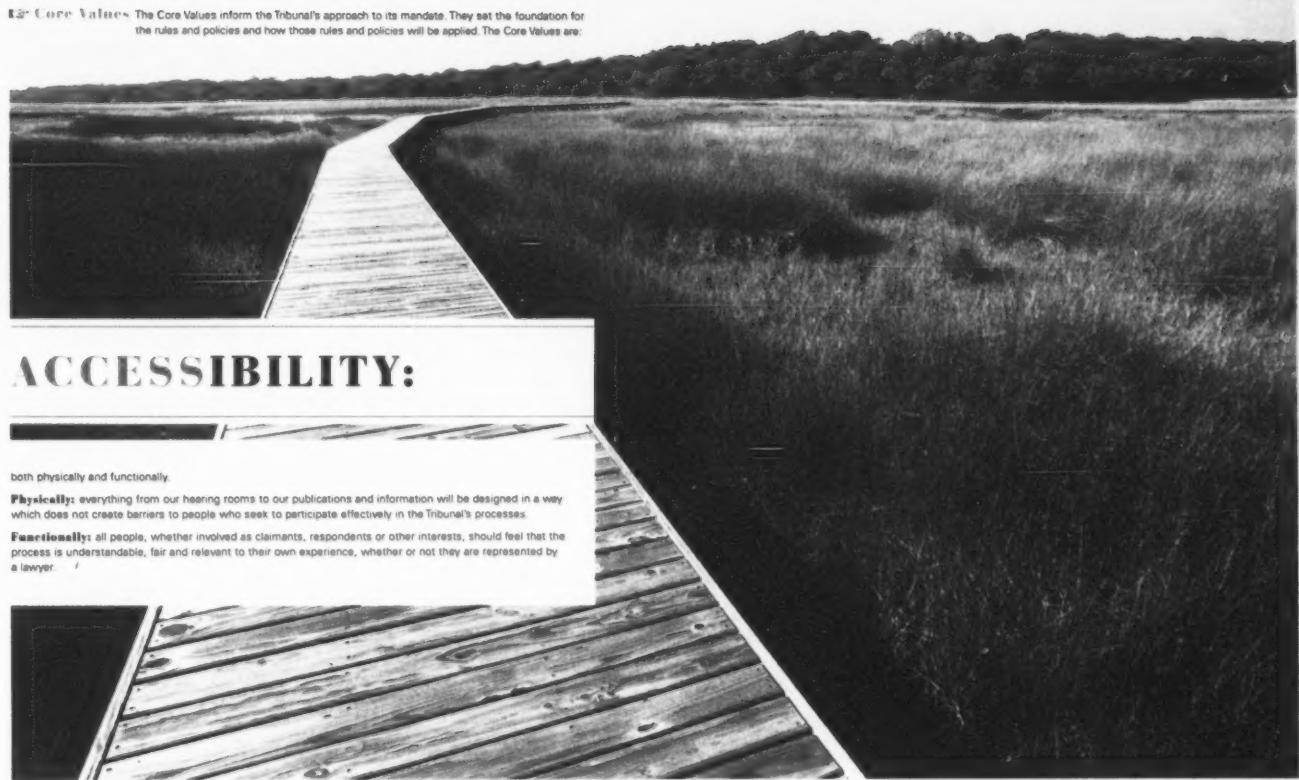
The Tribunal's mandate is to resolve applications brought under the *Ontario Human Rights Code*.



12th Mission

- The Tribunal will play its role as a pillar in the human rights system by providing expeditious and accessible processes to assist the parties to resolve complaints brought before the Tribunal, and to determine complaints where the parties are unable to resolve them.
- The Tribunal will be activist to seek a fair, just and expeditious resolution of the merits of an application.
- The Tribunal will provide and promote meaningful and effective public interest remedies in appropriate cases. The Tribunal will not bar settlements where parties freely desire to resolve their dispute.
- The Tribunal will seek to maintain the highest standards of integrity and quality of work.
- The Tribunal will strive for consistency to enhance the parties' reasonable expectations of Tribunal policy and process, but will remain responsive to differing cases and party needs, and to an evolving understanding of human rights and discrimination.
- The Tribunal will strive to promote a clear understanding of the Tribunal's work among the general public. The Tribunal will work to be responsive to the needs of its stakeholder communities.

Our Core Values The Core Values inform the Tribunal's approach to its mandate. They set the foundation for the rules and policies and how those rules and policies will be applied. The Core Values are:



ACCESSIBILITY:

both physically and functionally.

Physically: everything from our hearing rooms to our publications and information will be designed in a way which does not create barriers to people who seek to participate effectively in the Tribunal's processes.

Functionally: all people, whether involved as claimants, respondents or other interests, should feel that the process is understandable, fair and relevant to their own experience, whether or not they are represented by a lawyer.



FAIRNESS:

the process will ensure that decisions are based on the facts, the law and the merits of the case.



Tribunal procedures will be clearly established and decisions will be made in an open way, with substantive reasons that are clear, concise and understandable.

TRANSPARENCY:



TIMELINESS:

resolutions will be reached and decisions made in a timely way, so that delays do not frustrate the objects of the Code – to prevent discrimination and if a violation is found, to provide effective, meaningful remedies.



THE OPPORTUNITY TO BE HEARD:

a complaint that is within the jurisdiction of the Tribunal will not be finally determined without giving the parties an opportunity to make oral submissions.



Message from the Chair

It is my pleasure to present the 2009-10 Annual Report of the Human Rights Tribunal of Ontario.

This was the first full year in which the "new" HRTO engaged in its mandate of resolving human rights applications filed directly with it under s. 34 of the *Human Rights Code*. We received approximately 3,500 new applications this year, and a significant focus was on the work of resolving them by mediation or decision. Our experience and feedback from the community, including our Practice Advisory Committee, enabled us to continue to refine and improve our procedures, particularly around case processing.

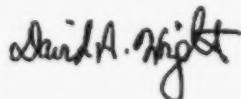
The HRTO continued to receive transition applications under s. 53 of the *Code* until June 30, 2009. Approximately 2,000 such applications, originally filed as complaints with the Ontario Human Rights Commission, were filed between June 30, 2008 and June 30, 2009. A group of adjudicators and staff, ably led by Alternate Chair Kaye Joachim, were assigned specifically to work on transition cases and made substantial progress in completing the work on these files. We also continued to deal with cases referred by the Ontario Human Rights Commission prior to December 30, 2008.

The HRTO's jurisprudence on procedural and substantive issues developed considerably this year. Decisions established precedents on the interpretation of new *Code* provisions and Rules of Procedure, and developed the law in many substantive areas including race discrimination, sexual harassment, the duty to accommodate disabilities, and the compliance of government benefit programs with the *Code*.

On November 1, 2009, Michael Gottheil left his position as HRTO Chair to become Executive Chair of Environment and Land Tribunals Ontario. Michael led the HRTO through the past four years of change as it developed from a small tribunal hearing approximately 150 cases per year into its present form. The HRTO's success in taking on its new role is due in large part to his work, in particular in consulting with and listening to stakeholders, and his vision of a human rights tribunal that would apply the best practices in administrative justice to deliver accessible, fair and expeditious dispute resolution.

A dedication to innovation and excellence is present throughout this organization. I am constantly impressed with the effort and focus on client service that is shown by HRTO staff and adjudicators, and I thank and commend them for their work.

As we gain a significant amount of experience in our new role, the HRTO continues to work to ensure that our processes are fair, accessible and appropriate to the issues raised in each case. Consultation is ongoing, and we always welcome feedback about our processes.



David A. Wright
Interim Chair

Table of Contents

Appointments Process	2
Operations	3
New Applications	3
Transitional Applications	5
Commission Referred Complaints	5
Outreach Activities	6
Appendices	7
(a) Application Process	7
(b) Organizational Chart	8
(c) Vice-chairs and Members	9
(d) Financials	11
(e) Selected HRTO Decisions 2009-10	12

Appointments Process

The *Human Rights Code* requires that members of the Tribunal possess:

- experience, knowledge or training with respect to human rights law and issues;
- aptitude for impartial adjudication; and,
- aptitude for applying alternative adjudicative practices and procedures.

Members of the Tribunal are appointed by the Government through an Order-in-Council from a list of candidates recommended by the Tribunal. The Tribunal develops this list by following an open, public and competitive recruitment process in accordance with

the directives of the Public Appointments Secretariat and the requirements in the *Code*. This list of qualified candidates is then provided to the Attorney General for consideration.

Tribunal members are bound by the Tribunal's *Code of Conduct*, and governed by a detailed position description.

See Appendix C for a complete list of our Vice-chairs, part-time members and their biographies.

Operations

Intake

The HRTO handled over 54,000 telephone inquiries and 500 in-person inquiries in fiscal 2009–2010. The majority involved questions about the HRTO's processes and were addressed by HRTO staff. However, a significant number of contacts – over 12,000 – were referred to the Human Rights Legal Support Centre or its website for legal assistance.

Caseload

Since June 30, 2008, all claims of discrimination under the *Code* are filed directly with the HRTO under section 34 or 35 of the *Code*. In addition to these "New Applications," the HRTO is responsible for resolving two other types of cases that originated in the old system:

- **Transitional Applications:** These are applications filed with the HRTO between June 30, 2008 and June 30, 2009 based on complaints originally filed with the Ontario Human Rights Commission under the old system [section 53 of the *Code*]; and
- **Commission Referred Complaints:** These are complaints filed under the old system where the Commission referred the matter to the HRTO for hearing.

New Applications

Applications: In fiscal 2009–2010, the HRTO received 3,551 new applications, an average of just fewer than 300 per month. Less than 30% of applicants were represented at the time the application was filed. A geographical breakdown of applications based on the applicant's postal code shows:

Eastern (K)	405 (11.4%)
Central (L)	1,357 (38.2%)
Toronto (M)	860 (24.2%)
Western (N)	618 (17.4%)
Northern (P)	214 (6.0%)
Other	97 (2.7%)

The following chart shows the number and percentage of applications based on each of the five social areas covered by the *Code*. Please note that while most applications only refer to one social area, some are based on more than one, so the total exceeds the number of applications received by a small amount.

Social Area	Number and Percentage of applications
Employment	2,664 (75.0%)
Goods, Services and Facilities	714 (20.1%)
Housing	201 (5.7%)
Contracts	64 (1.8%)
Membership in a Vocation Ass'n	41 (1.2%)
No Social Area	75 (2.1%)

The following chart shows the number and percentage of applications in which each prohibited ground under the *Code* is raised. Because many applications claim discrimination based on more than one ground, the totals in the chart far exceed the total number of applications received.

Ground	Applications
Disability	1,853 (52.2%)
Reprisal	896 (25.2%)
Sex, Pregnancy and Gender Identity	836 (23.5%)
Race	699 (19.7%)
Colour	494 (13.9%)
Age	488 (13.7%)
Ethnic Origin	485 (13.7%)
Place of Origin	438 (12.3%)
Family Status	345 (9.7%)
Ancestry	336 (9.5%)
Sexual Solicitation or Advances	330 (9.3%)
Creed	222 (6.3%)
Marital Status	210 (5.9%)
Sexual Orientation	141 (4.0%)
Association	140 (3.9%)
Citizenship	128 (3.6%)
Record of Offences	126 (3.5%)
Receipt of Public Assistance	50 (1.4%)
No grounds	106 (3.0%)

4 –

Mediation: As part of the HRTO's process, parties are asked whether they wish to engage in mediation as a way to resolve their dispute. Where parties do not indicate a willingness to participate in mediation, the HRTO may follow up to explore mediation as an option, but participation in mediation remains voluntary.

Mediation is conducted in a structured way with a listening component, where parties have an opportunity to tell their stories and have an opportunity to be heard. Mediation is conducted by an HRTO Vice-chair or Member who has expertise in human rights and alternative dispute resolution.

The HRTO's role in mediation is to facilitate the parties' efforts in reaching a settlement. The HRTO does not approve settlements. Settlements are voluntary and require the agreement of all parties.

The Vice-chair or Member may provide information on likely outcomes if the case does not settle, or what outcomes have been reached in other similar cases. If the case does not settle, another Vice-chair or Member is assigned to adjudicate the matter.

In fiscal 2009–2010, the HRTO held over 1,200 mediations of new applications, with a settlement rate of approximately 67%.

Hearings and Decisions: Where mediation does not result in a settlement, or the parties do not opt for mediation, the HRTO issues a Confirmation of Hearing notice. Hearings on the merits are usually in-person, and are held in 12 regional centres across Ontario. Procedural and preliminary matters may be heard by conference call, in writing or in person. Decisions are available on-line at:

<http://www.canlii.org/en/on/onhrt/index.html>

The Tribunal's approach to hearings incorporates the following principles:

- The Adjudicator plays an active role in the hearing process; the procedure used in each hearing may vary.
- The Rules of Procedure allow the Adjudicator to adopt non-traditional methods of adjudication in order to best focus on the issues in dispute and to ensure the process is understandable and fair whether or not the parties are represented by lawyers or paralegals.
- The Adjudicator has the power to question witnesses, receive testimony not taken under oath and limit the evidence or submissions on any issue.
- The Adjudicator is a neutral decision-maker and cannot take responsibility for identifying and leading evidence.
- The Adjudicator will adopt the approach which facilitates the fair, just and expeditious resolution of the merits of the application, based on the facts and the law, in light of the nature of the issues in the case.
- Hearings are open, transparent and conducted in accordance with procedural fairness.
- Decisions are clear, well reasoned, and concise and issued in a timely manner.

The following chart summarizes the 1,740 decisions issued in 2009–2010 involving new applications.

Type of Decision	Totals
Final decision on the merits	75
Discrimination found	29
Discrimination not found	46
Dismissal on a preliminary basis	301
Deferrals	147
Withdrawals	212
Other procedural issues	931
Reconsideration	66
Breach of settlement decision	8
Total Decisions	1,740

Workload and timeliness: Despite this level of activity, the HRTO's active caseload has grown. At the start of the fiscal year, there were 1,719 open cases. In 2009–2010, the HRTO received 3,551 new applications and closed 1,938. At the end of the year, there were 3,384 open cases. Roughly 500 of these cases were deferred and therefore inactive.

The HRTO has established the following performance measure:

75% of applications that are accepted as complete will be resolved within one year.

Of the applications resolved in fiscal 2009–2010, 95% were resolved within one year of acceptance of the completed application. The average was 183 days and the median was 171 days.

Transitional Applications

The new legislation provided a mechanism for dealing with the roughly 4,000 open complaints pending with the Commission. For a period of one year – June 30, 2008 to June 30, 2009 – the complainant could bring the complaint to the HRTO by filing an application under section 53 of the *Code*.

During this period, the HRTO received a total of 1,926 Transitional Applications. 775 of these applications were filed in 2009–2010. It is noteworthy that 589 applications – over 30% of the total – were filed in June 2009, the final month.

The HRTO has adopted procedures designed to resolve these cases in an expeditious manner. During 2009–2010, 919 Transitional applications were completed, leaving 731 still to be resolved. The following chart sets out the details:

Mediations held	690
Case Resolution Conferences (hearings) held	388
Types of closure	
Settled at mediation	361
Settled outside Mediation	140
Final decisions (including Reconsideration)	316
Withdrawn / administrative closures	102
Total closures	919

Commission Referred Cases

Under the old system, the Commission decided which complaints would be referred to the HRTO for a hearing. Under the new legislation, this continued until December 2008, when the Commission referred its last group of complaints.

Therefore, the HRTO has been working to resolve a finite number of Commission Referred Complaints. At the end of fiscal 2008–2009, that number was 697. By the end of fiscal 2009–2010, the number was 469. However, because many of these complaints involve related issues, the effective number of active cases by fiscal year end was down to 56. Of these:

- 34 were scheduled for hearing
- 10 were adjourned
- 2 were in active settlement discussions
- 10 were awaiting final decisions

During fiscal 2009–2010, the HRTO issued 63 decisions in respect of Commission Referred Complaints, 13 of which were final decisions on the merits. Of these, discrimination was found in 11 cases, with two complaints being dismissed.

Outreach Activities

Website

The HRTO website (www.hrto.ca) is the primary source of information about its processes, including Guides, Rules of Procedure, Practice Directions, forms and links to relevant resources. In early April 2010, the HRTO updated its website to make it more accessible and user-friendly, including:

- adjustable font sizes
- a “skip to content” navigation option for those using screen readers
- printer friendly versions of all pages
- an option to send HRTO website pages by email
- the ability to move directly between the English and French pages

Practice Advisory Committee

The HRTO Practice Advisory Committee (PAC) held its inaugural meeting on June 10, 2009. Led by its co-chairs, Mary Cornish and Patty Murray, the PAC is comprised of 11 members who appear regularly before the HRTO, four of whom regularly appear for applicants and four of whom regularly appear for respondents, and one member from each of the following organizations – the Ontario Human Rights Commission, the Human Rights Legal Support Centre and the Ontario Bar Association. The HRTO's Chair and Counsel to the Chair are also members of the PAC. A list of the PAC's current members is available on the HRTO website.

The PAC is an important resource to the HRTO, providing feedback from our stakeholder communities on the HRTO's policies, practices and performance. The PAC met four times in 2009–2010. Among other things, the members of the PAC were consulted on and provided extensive comments on proposed revisions to our Rules, Freedom of Information and Protection of Privacy processes and procedures for processing Applications.

Speaking Engagements

HRTO adjudicators and staff were actively involved in speaking to various stakeholder groups. In 2009–2010, HRTO representatives attended approximately 40 meetings and conferences, speaking across the province to groups including lawyers, other legal representatives, social service agencies, health care providers, students and delegations from other jurisdictions.

Appendices

(a) Application Process

This flowchart offers an overview of the Tribunal's new Application process. Details are available on the HRTO website in the Applicant's Guide and the Respondent's Guide.



(b) Organizational Chart

Human Rights Tribunal of Ontario

At March 31, 2010

Interim Chair

David A. Wright

The Board

- Vice-chair (20)
- Part-time Members (23)

Alternate Chair

Kaye Joachim

Secretary to Chair

Executive Director

David Draper

- Executive Assistant
- Media Relations Officer
- Systems Lead
- Systems Officer
- Systems Application Officer
- Business Analyst

Counsel to Chair

Margaret Leighton

- Tribunal Counsel (2)
- Legal Secretary
- Adjudicative Support Assistant (4)

Registrar – New Applications

Richard Hennessey

- Case Processing Team Leaders (2)
- Case Processing Officers (14)
- Schedulers (4)
- Administrative Assistant

Registrar – Transition

Patricia Grenier

- Case Processing Team Lead
- Case Processing Coordinator
- Case Processing Officers (4)
- Intake Clerks (2)
- Schedulers (2)
- Adjudicative Support Assistant

Manager, Business Services

Fanella Hodge

- Coordinator, Administration
- Hearing Centre Coordinator
- Human Resources Administrator
- Administrative Assistant
- Intake Clerks (2)
- Receptionists (2)

(c) Vice-chairs and Members

Adjudicator	First Appointed	Term Expires
Interim Chair		
Wright, David A.	March 7, 2007 as Vice-chair	
	November 2, 2009 as Interim Chair	May 01, 2010
Vice-Chairs (Full Time)		
Bhaba, Faisal	October 08, 2008	October 07, 2010
Bhattacharjee, Kenneth	September 03, 2008	September 02, 2010
Brennenstuhl, Keith	September 04, 2007	September 03, 2012
Chadha, Ena	September 04, 2007	September 03, 2012
Cook, Brian	September 03, 2008	September 02, 2010
Eyolfson, Brian	August 13, 2007	August 12, 2012
Flaherty, Michelle	October 22, 2008	October 21, 2010
Hart, Mark	September 04, 2007	September 03, 2012
Joachim, Kaye	December 22, 2005	September 03, 2012
Keene, Judith	November 26, 2008	November 25, 2010
Liang, Sherry	September 04, 2007	September 03, 2010
Martin, Kathleen	June 28, 2006	September 03, 2010
Muir, David	August 21, 2008	August 20, 2010
Overend, Naomi	September 17, 2008	September 16, 2010
Price, Sheri	September 03, 2008	September 02, 2010
Reaume, Leslie	June 27, 2007	June 26, 2012
Renton, Alison	October 22, 2008	October 21, 2010
Sengupta, Jayashree (Jay)	September 03, 2008	September 02, 2010
Truemner, Mary	September 03, 2008	September 02, 2010
Whist, Eric	September 03, 2008	September 02, 2010

Adjudicator	First Appointed	Term Expires
Part-Time Members		
McKellar, Mary Anne	April 17, 1995	February 24, 2014
Anderson, Ian B.	October 26, 2005	October 25, 2010
Chapman, Pamela	May 13, 2009	May 12, 2011
Diamond, Andrew	August 21, 2008	August 20, 2010
Dimovski, Jim	August 12, 2008	August 11, 2010
Doyle, Maureen	August 21, 2008	August 20, 2010
Handelman, Mark	August 12, 2008	August 11, 2010
Hewat, Dale Lisa	September 24, 2008	September 23, 2010
Hinchman, Judith Anne	August 12, 2008	August 11, 2010
Jacobs, Laverne Astrid	December 22, 2005	December 21, 2013
Jain, Ajit	March 30, 1999	September 29, 2012
Kapur, Sunil	June 28, 2006	June 27, 2014
Manwaring, John	May 13, 2009	May 12, 2011
Osborn, David	June 28, 2006	June 27, 2014
Rosenberg, Alvin B.	October 30, 2000	February 03, 2012
Rowan, Caroline	October 26, 2005	October 25, 2010
Sandomirsky, Janice	August 12, 2008	August 11, 2010
Scott, Jennifer A.	July 17, 2006	July 16, 2011
Serena, Susan Jane	October 26, 2005	October 25, 2010
Shannon, David W.	August 21, 2008	August 20, 2010
Sheehan, Brian	August 12, 2008	August 11, 2010
Slotnick, Lorne	September 24, 2008	September 23, 2010
Whyte, Alan	March 01, 2010	September 02, 2010
Wiggins, Ailsa	August 21, 2008	August 20, 2010

(d) Financials

The HRTO is established as an independent adjudicative tribunal and operates at arm's length from the Ministry of the Attorney General. From a budgetary perspective, the HRTO is an Adjudicative Agency accountable to the Attorney General. The HRTO's annual budget is part of the Ministry's estimates and allocation process and the HRTO is required to report quarterly on its expenditures and planned commitments. The Deputy Attorney General has delegated authority for specific financial and administrative transactions to the Chair, Executive Director and Managers.

The HRTO is subject to audit review and expenditure constraints and its managers are accountable for following established management practices and using public resources for authorized purposes.

Standard Account	Original MBC Budget	Revised MBC Budget	HRTO (New Applications)	Transition (Transitional)		Variance Revised MBC Budget
				Applications and Commission Referred Complaints)	2009-2010 Total Expenditures	
				2009-2010 Total Expenditures		
Salary & Wages	6,952.7	6,702.2	5,693.35	780.47	6,473.82	
Employee Benefits	902.6	697.9	672.86	103.27	776.12	
Transportation & Communications	1,619.5	602.2	516.40	126.97	643.38	
Services	1,252.4	1,446.1	893.64	553.74	1,447.38	
Supplies and Equipment	389.5	189.7	158.16	24.61	182.77	
Total	11,116.70	9,638.10	7,934.41	1,589.06	9,523.47	114.63

The new, expanded mandate of the HRTO came into effect on June 30, 2008, when it assumed responsibility for resolving all claims of discrimination under the *Human Rights Code*. In addition, it was tasked with resolving complaints referred by the Ontario Human Rights Commission under the old system (Commission Referred Complaints) and over a thousand complaints originally filed with the Commission (Transitional Applications).

Therefore, 2009/2010 was the first full fiscal year of the new HRTO. Although applications were filed, the time it took those cases to move through the process meant that full staffing was not required immediately. The HRTO brought on staff only as required, resulting in projected savings from the original budget allocation of \$11,116,700. As a result, the HRTO's budget was revised downward to \$9,638,100.

- 11

The variance from the revised budget was \$114,628. The year-end variance is attributable to delayed invoicing for services and delayed hiring and vacancy management causing a savings in salary, wages and benefits.

All figures in \$000.0 thousand.

(e) Selected HRTO Decisions 2009-10

During 2009-2010, the HRTO issued over 2,000 decisions. These decisions helped clarify various procedural issues, established precedents on the interpretation of new *Code* provisions and developed the law in many substantive areas including race discrimination, sexual harassment, the duty to accommodate disabilities, and the compliance of government benefit programs with the *Code*. The following are some significant decisions.

Hotte v. Ontario (Finance).

2009 HRTO 458 (April 20, 2009)

The applicant challenged provincial tax provisions that prevented him from splitting his pension income in the same manner as someone 65 years of age or older. The HRTO dismissed the application, concluding that section 15 of the *Code* specifically contemplates circumstances such as this where preferential treatment can be given to those 65 years of age or older.

S.H. v. M(...) Painting.

2009 HRTO 595 (May 7, 2009)

The complainant, an Ojibway woman and single mother, claimed to have experienced harassment and discrimination in employment based on sex, family status, race and ancestry. Prior to the human rights hearing, the personal respondent pled guilty in a criminal proceeding to sexually assaulting the complainant. The HRTO considered the plea, along with other evidence, in assessing the respondent's credibility and determining that the complainant had experienced discrimination under the *Code*.

The HRTO found that the complainant was vulnerable and had "endured a persistent, unrelenting pattern of inappropriate comments and conduct, including inappropriate sexual touching and one act of serious sexual aggression." As a result, the respondents were ordered to pay the applicant's lost wages plus \$40,000 as monetary compensation for injury to her dignity, feelings and self-respect. The personal respondent was also required to attend an anti-harassment programme and to report if any female employees who left positions of employment from any company he owned and operated for a period of two years.

C.D. v. Wal-Mart.

2009 HRTO 801 (June 9, 2009)

This Interim Decision marks the first occasion where the HRTO ordered an interim remedy in accordance with its new powers and rules.

The applicant was the sole caregiver for a grandchild with significant disabilities. The respondent changed her hours of work, affecting her ability to look after her grandchild. The HRTO accepted that this ultimately might be found to be discrimination on the basis of family status and concluded that the balance of convenience favoured ordering the interim remedy. Any inconvenience to the respondent in allowing the applicant to continue working the same hours was minimal compared to the possible harm to the applicant and her grandchild.

As a result, the respondent was ordered not to modify the applicant's work schedule until the application was heard and decided.

Phipps v. Toronto Police Services Board.

2009 HRTO 877 (June 18, 2009);

2009 HRTO 1604 (October 6, 2009)

This was an application heard under the transitional provisions of the *Code* in which the HRTO found the applicant experienced discrimination in policing services on the basis of race and colour when he was stopped, questioned and treated with suspicion.

At the time of the interaction, the police were patrolling an affluent neighbourhood and were on alert for two white, east European men using a vehicle who were suspected of residential break and enters. The applicant was dressed in a Canada Post uniform, carried a mailbag and was seen delivering mail on foot.

The HRTO rejected the respondent police officer's claims that the applicant was exhibiting unusual or suspicious behaviour. Rather, the HRTO concluded that the decision to question the applicant stemmed in part from the fact he was an African-Canadian male in an affluent neighbourhood.

In its decision on remedy, the HRTO found that both the Chief of Police and the Toronto Police Services Board (TPSB) have joint responsibility for ensuring compliance with the *Code*. The applicant was awarded \$10,000 to compensate the applicant for the injury to his dignity, feelings and self-respect, the breach of his *Code* rights and the impact of the incident.

Three applications for judicial review from these decisions were dismissed by the Divisional Court on October 6, 2010. The respondent Chief of Police is seeking leave to appeal the Divisional Court's decision to the Ontario Court of Appeal.

Romanchook v. Garda Ontario.

2009 HRTO 1077 (July 20, 2009)

In this Interim Decision, the HRTO addresses the principles of legal capacity and when the HRTO can prohibit a legal representative from appearing in its process.

The HRTO had serious concerns about the applicant's capacity to conduct the litigation and concluded that the proceeding could not continue without a litigation guardian. No one was offering to act in that capacity and, unlike the courts, the HRTO does not have the authority to appoint the Public Guardian and Trustee. As a result, the proceedings were suspended unless and until a litigation guardian was appointed or there was new evidence that the applicant was competent to make decisions about the litigation.

With respect to the paralegal who appeared for the applicant, the HRTO found that various aspects of his representation of the applicant, taken together, gave the appearance of conflicts of interest and concluded that to allow him to continue as representative would undermine the integrity of the administration of justice. The HRTO found that the power to control its process under the *Statutory Powers Procedure Act* allowed it to disqualify a representative, and ordered that the paralegal could not represent this applicant.

Thompson v. Selective Personnel Limited.

2009 HRTO 1224 (August 6, 2009)

The applicant responded to an advertisement for a nanny, providing letters of reference and a copy of a criminal records check. She was asked to complete an application form which asked: "have you ever been under psychiatric care?" She answered "yes" and explained that she sometimes received counselling for low self-esteem. The respondent then advised that the position was on hold and no other jobs were available. The applicant felt humiliated and believed she had been denied the job because she answered "yes" to the question about psychiatric care.

The HRTO found that although the applicant was not denied this particular job on any discriminatory basis, the inclusion of the question was discriminatory and discouraged the applicant from pursuing other positions. As a result, the respondent was ordered to pay \$3,000 in compensation for injury to dignity and amend its application form.

The respondent has sought judicial review of this decision.

McDonald v. Mid-Huron Roofing.

2009 HRTO 1306 (August 25, 2009)

The HRTO found that during his wife's pregnancy, the applicant took time off work without pay on 14 occasions with his employer's knowledge and permission. On the day he was dismissed from employment, he left work to take his son to a medical appointment because his wife was unable to do so, and did not return at the time the respondent wanted him back.

The HRTO found that the respondent failed to consider whether they could accommodate the applicant's need to care for his son and failed to establish that his absences caused undue hardship to the company. Based on its conclusion that the respondent discriminated against the applicant on the ground of family status, the respondent were ordered to pay the applicant \$3,000 for his lost wages and \$20,000 as monetary compensation for the intangible harm caused by the discrimination.

**Zaki v. Ontario
(Community and Social Services).**

2009 HRTO 1595 (October 2, 2009)

In this Interim Decision, the HRTO considered and refined its analysis of its authority to deal with allegations of discrimination made against other adjudicative bodies.

The HRTO concluded that the prohibition against discrimination in the provision of services in section 1 of the *Code* does not include the content, reasons or result of adjudicative decision-making. In determining its jurisdiction, the HRTO will look at whether the claim is exclusively about the adjudication or decision, or whether the applicant is making a claim about his or her inability to obtain benefits or other services from the respondent. In the latter case, while there is a statutory decision involved, the provision of the benefit or privilege is a "service" within the meaning of s. 1 of the *Code*, and the applicant may argue that he or she has experienced discrimination in the provision of that service.

In this case, the application was dismissed against the Social Benefits Tribunal, an adjudicative body, because it related to the content and result of decisions. However, the application against the Ministry of Community and Social Services was allowed to proceed because it involved the denial of benefits controlled by the Ministry.

Smith v. Menzies Chrysler.

2009 HRTO 1936 (November 12, 2009)

This decision found that protection from sexual harassment includes protection from inappropriate sexualisation of the workplace.

The male personal respondent made sexual comments, gestures and actions that ridiculed and disparaged the male complainant. The HRTO found that this conduct was sexual harassment. The respondents' argument that because of the same-sex composition of the sales force, the behaviour should be accepted as simply good-natured fun among "the boys" was rejected. There is no basis in the law for excluding sexually vexatious behaviour from *Code* protection simply because it occurs in a same-sex work setting or because some of the participants appear to enjoy it.

The corporate respondent was found to have condoned the sexualized work environment and failed to investigate the complainant's concerns. In addition, the HRTO found that the corporate respondent reprised against the complainant by terminating his employment and reporting him to the police because he objected to the poisoned work environment and expressed an intent to file a human rights complaint. As a result, the respondents were ordered to pay monetary compensation totalling \$50,000 for the consequences of the discrimination and reprisal.

**DiSalvo v. Halton Condominium Corp.
No. 186.**

2009 HRTO 2120 (December 8, 2009)

The HRTO found that the respondent discriminated against the applicant when it required him to bear the cost of modifications and installation of a ramp to the common elements of the condominium that he needed to access to the front door of his unit. The HRTO found the respondent failed to meet both the procedural and substantive aspects of the duty to accommodate. The respondent did not claim the modifications would be an undue hardship, had failed to consider alternatives and rejected the applicant's attempts to discuss the issue.

Cartier v. Nairn.

2009 HRTO 2208 (December 17, 2009)

The HRTO dismissed an application alleging that a labour arbitrator had discriminated against the applicant on the basis of disability by dismissing her discharge grievance.

The HRTO found that the arbitrator was acting in the exercise of her duties under the *Labour Relations Act, 1995* and, as such, the HRTO had no jurisdiction to consider the application because the arbitrator's actions were subject to judicial immunity. Exposing labour arbitrators to liability under the *Code* would drastically reduce their ability to decide the cases before them independently and impartially.

Scarlett v. Hamilton Health Sciences Corp..

2010 HRTO 5 (January 4, 2010)

The HRTO found that the respondent did not fail in its duty to accommodate the applicant's disability and dismissed this application.

The procedural component of the duty to accommodate requires the respondent to consider whether appropriate accommodation is possible before terminating the applicant's employment. The duty to accommodate is part of a collaborative process in which the respondent's actions and responsibilities must be understood in the context of the information before it and positions taken by the applicant.

In this case, the respondent asked for medical documentation to support the applicant's requested accommodation – a leave from work. It advised the applicant that his medical documentation was insufficient and gave him a further opportunity to provide supporting documentation. Although he was asked to do so, the applicant did not identify any restrictions that affected his ability to return to work. The applicant did not propose any alternative accommodation measures, and did not demonstrate that a leave of absence was a necessary accommodation. In the circumstances the respondent did not breach the *Code* and the application was dismissed.

The applicant has sought judicial review of this decision.

Ball v. Ontario (Community and Social Services).

2010 HRTO 360 (February 17, 2010)

This Decision determined three complaints identified by the parties as Lead Cases in respect of over 100 other individual complaints or applications referred or filed with the HRTO. The applicants alleged that the provincial special diet allowance (SDA) programme, which based eligibility on a fixed list of conditions with set monetary amounts for each one, was discriminatory.

The HRTO noted the significant tension inherent in the design of large-scale benefit programs for persons with disabilities. While on the one hand an important human rights value is responsiveness to individual characteristics and needs, on the other effective, fair and consistent administration of such benefit programmes may be better done through the use of categories.

The HRTO's analysis concluded that the purpose of the SDA program was to assist social assistance recipients with a medically recognised condition warranting a special diet that imposes costs in excess of a regular healthy diet.

The HRTO determined that in order to establish discrimination related to the SDA, the complainant must show that the claim is based on a disability or disabilities, there is a general recognition in the Ontario medical community that modifications to a healthy diet should be made because of the identified disability, this diet leads to additional food costs, and that there is no funding for those additional food costs or the funding is significantly disproportionate to those costs.

The HRTO agreed that some deference must be given to the Ministry in establishing amounts payable for SDA, but where that amount is significantly disproportionate to the actual additional costs connected with the diet, as compared with other disabilities for which funding is provided, there will be a finding of discrimination.

The HRTO rejected the claim that the SDA was protected from challenge on the basis that it is a special program as defined by s.14(1) of the *Code*. Where a challenge to a special program comes from someone the program is designed to assist, the general prohibitions against discrimination will apply.

The HRTO upheld the complaints on the basis that the SDA available to each complainant was significantly disproportionate to the actual costs of the diet for three conditions and that a fourth was not funded at all. The respondent was ordered to provide SDA benefits in accordance with the *Code*.

The respondent has brought an application for judicial review of the portion of the HRTO's decision ordering funding for hypoproteinemia.



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